



0000111536

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

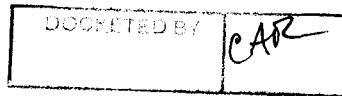
Arizona Corporation Commission

DOCKETED

DEC 23 2002

RECEIVED

2002 DEC 23 P 4:10

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE WITH
§ 271 OF THE
TELECOMMUNICATIONS ACT OF
1996.

DOCKET NO. T-00000B-97-0238

**QWEST'S SUPPLEMENTAL COMMENTS TO ITS MOTION TO
RECONSIDER PROCEDURAL ORDER**

Qwest, Corporation hereby provides additional written comments in connection with its Motion to Reconsider the current Procedural Order of November 7, 2002. In its original Motion to Reconsider, Qwest asked the Arizona Corporation Commission (ACC) to sever the connection between the 271 docket, and the ACC's pending §252(e) docket; specifically, Qwest asked that the Commission modify the Procedural Order to remove the following language: "Thus, it is only logical that the section 252(e) investigation should proceed, and Phase A conclude, prior to the conclusion of the investigation into the public interest portion of the Section 271 investigation, as the findings may be relevant to our ultimate recommendation to the FCC." By Procedural Order dated December 20, 2002, the Administrative Law Judge modified the Procedural order of November 7, 2002 to eliminate this finding, but deferred decision on whether Qwest's 271 Application can precede completion of the 252(e) docket.

The reason for the deferral appears to be Staff's December 12, 2002 comments in response to the Motion to Reconsider, which recommend a severing of the two cases when Qwest provides "acknowledgement" it has done something wrong and provides "adequate assurances that it will change its conduct." *Staff Comments at 6*. In the December 13, 2002 oral argument, Qwest attempted to provide those assurances through Arizona President Pat Quinn. However, the Staff stated that Qwest "must make at least a written filing in the 271 docket which addresses and provides adequate assurances [that] address the Commission's concerns." *December 13, 2002 Transcript at 77:13-19*. The purpose of these supplemental comments is to provide the Staff and Commission with those written assurances. To summarize, as Mr. Quinn stated in the December 13 hearing "[o]ur new [Arizona] team is apologizing for mistakes of the past, vowing to correct them, and [pledging] they will not occur again." *December 13, 2002 Transcript at 7: 3-5*.

A. Qwest's New Process for Reviewing and Filing Agreements Under §252.

The entire premise of the ACC's §252(e) docket is focused on various agreements not filed as required under Section 252 of the Act. As Mr. Quinn explained, now that the FCC has defined the standard for the types of agreements that must be filed,¹ it is apparent that there are several agreements that Qwest should have filed, but did not. Qwest has done two things to rectify this issue. First, Qwest has now filed all active agreements that satisfy the FCC's standard. Second, Qwest has created a team of people to review all agreements with CLECs and apply the FCC standards to ensure all

¹ *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, FCC Memorandum and Order, WC Docket No. 02-89, FCC 02-276 (Oct. 4, 2002).

agreements are properly filed going forward. The new process prevents this issue from recurring.

As Qwest described in the December 13 oral argument, the testimony of Larry Brotherson filed in the Section 252(e) docket defines the scope of the new process. Specifically:

[I]n addition to adopting the filing standard for all wholesale contracts in May, [2002,] Qwest instituted an internal review process to ensure compliance with that standard and Qwest's Section 252 obligations. Under the new review process, Qwest has created a committee, composed of a lawyer from Policy and Law, a policy person from Policy and Law knowledgeable about wholesale matters, a lawyer from Wholesale/Commercial Law, an employee from Network Regulatory, and employee from Wholesale, and an employee from Wholesale Service Delivery, to review wholesale settlement contracts. The committee meets once a week, as well as on an as-needed basis, and it is now a permanent part of Qwest's structure. The committee has reviewed all wholesale settlement contracts into which Qwest has entered since the committee's inception. Any provision that contains forward-looking terms pertaining to Section 251(b) or (c) services has been put into an interconnection agreement amendment and filed with the state commissions.

In addition, at the December 13 oral argument, Qwest informed the ACC that in Minnesota Qwest offered to retain an independent auditor to review the work of this new committee and to file the auditor's findings with this Commission. While Qwest expects this offer to be accepted, AT&T has opposed the offer because Qwest plans to pay for the independent review, which AT&T claims would taint the results. The independence of the OSS testing companies should alleviate any concern about AT&T's stated concern.

Filing of the existing agreements coupled with Qwest's new process should allay any concerns that the ACC has voiced about this issue. This should provide the requisite "adequate assurance" necessary to justify severing the 271 and 252(e) dockets.

B. Going Forward, Qwest Will File All Settlement Agreements in Dockets of Generic Application.

The second concern voiced by the ACC and its Staff concerned provisions in certain settlement agreements that limited participation in the merger and 271 dockets. The ACC has expressed concern that such provisions impair the Commission's regulatory oversight. There is a balance between impinging upon the ACC's regulatory oversight and the settlement of cases. The objective is to balance the two in a manner suitable to the Commission. As Mr. Quinn explained, to meet the two competing interests, Qwest will "file all settlement agreements" in "any proceeding with generic application" on a going forward basis. As part of the Commission's review of the Settlement Agreement, it can determine whether the terms are freely negotiated, or whether the agreement should be disapproved as against the public interest. "This will allow the Commission to review the terms of such settlements and assure itself that they are consistent with the public interest." *December 13, 2002 Transcript at 8: 17-22.*

When discussing this issue during the December 13 hearing, it was apparent the Commission wanted Qwest to acknowledge that certain agreements were inappropriate because they tied withdrawing from the 271 docket to the unrelated issue of price reductions. *December 13, 2002 Transcript at 38: 3-7 (comments of Commissioner Spitzer).* The provisions in these agreements clearly sent the inappropriate signal that Qwest was buying the silence of certain competitors. That was certainly not Qwest's intention. As the ACC knows, the purpose of a settlement is to reach an accord with an opponent to litigation that both parties find acceptable and renders the need for further litigation moot. Most settlement agreements contain language such as the complaining party "releases and forever discharges" the opposing party for the actions that were the

basis of the complaint. Thus, the net effect of settlement is almost always an abandonment of existing litigation. As Commissioner Spitzer recognized, settlement of cases is "appropriate." *December 13, 2002 Transcript at 37: 23-25*. The difference, however, between acceptable and inappropriate settlements is difficult to define and requires a subjective case-by-case analysis. Qwest therefore believes that the best way to ensure the Commission's concerns are addressed is to adopt Qwest's proposal that requires the filing of all settlement agreements in dockets of generic application.

The filing of settlement agreements in cases of generic application should allay any concerns that the ACC has voiced about this issue. This should provide the requisite "adequate assurance" necessary to justify severing the 271 and 252(e) dockets.

C. Qwest Has Implemented Appropriate Procedures for Updating its Wholesale Rates Going Forward.

The third area of concern voiced by the ACC and Staff concerns the speed with which Qwest implements new rates imposed by the Commission in cost docket proceedings. As indicated in its Answer to the Commission's Complaint and Order to Show Cause (Decision 65450), Qwest has already taken action to address concerns raised by the Commission in this area. Qwest acknowledges its significant contribution to this problem and pledges to work cooperatively with the Commission, its Staff, and interested parties to ensure that such incidents are not repeated in the future.

Consistent with Qwest's commitment at the Commission's December 2nd Open Meeting, Qwest completed the rate change process for the wholesale rate changes ordered by the Commission in the Phase II Decision on December 15, 2002.² As of that

² The rate change process was completed by December 15, 2002 for all customers except five wireless customers, including Qwest Wireless. The rate change process has been completed for those companies as

date, Commission-mandated rates were entered into Qwest billing systems. The new rates, including credits due back to the effective date of the Order, are now being applied to each CLEC customer's bill based on the individual CLEC's billing date. In addition, as part of the normal "true-up" process, in mid-January Qwest will also pay applicable interest to all affected customers. These remedial actions, albeit taking longer than it would optimally take, place Qwest in full compliance with the Commission's original Order.

In addition, Qwest has committed to full implementation of Commission-mandated rates in Decision No. 65451 ("the Phase IIA Decision") 60 days after its customary compliance filing, which is due January 11.

Most importantly, Qwest has already begun a full re-examination of its rate implementation processes and procedures with the goal to ensure consistency between Qwest's practices and those of other major incumbent local exchange providers. Toward that end, Qwest has:

- Engaged outside consultants to provide recommendations for full automation of processes associated with cost docket implementation;
- Set a schedule for delivery of mechanized solutions by 1st Quarter 2003;
- Modified its communications process for CLECs to require correspondence to all wholesale customers at critical process points, including:
 1. Immediately after the issuance of a final Commission Order;
 2. Immediately after rate sheets are updated; and,

of the filing of these comments. Those customers will see the changed rates in their next bill following this date.

3. Immediately prior to the introduction of new Commission-approved rates to wholesale customer bills.

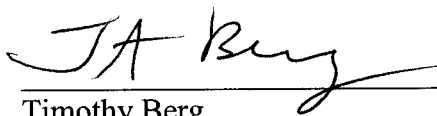
Qwest does not view these process changes as exhaustive of our future actions in this area. We do believe, however, that they represent a long-needed and appropriate first step toward addressing the legitimate concerns identified in the Commission's Order to Show Cause action.

Implementation of the current rates with a promise to implement Phase IIA of the cost docket within 60 days coupled with the process improvements Qwest is implementing should allay any concerns that the ACC has voiced about this issue. This should provide the requisite "adequate assurance" necessary to justify severing the 271 and 252(e) dockets.

D. Conclusion

The ACC and the Staff have expressed understandable concerns about various issues. The Commission has made clear that this case is now about credibility and whether Qwest will ensure the mistakes of the past do not recur. Through this pleading, Qwest has attempted to establish its clear intentions to rectify its past mistakes. Through this pleading, Qwest has attempted to create a clear road map of how it will ensure the Commission's identified concerns do not recur. At this point, Qwest asks that the ACC now formally find that Qwest has provided the requisite assurances such that the Section 271 docket can now proceed swiftly to final decision.

RESPECTFULLY SUBMITTED this 23rd day of December, 2002.



Timothy Berg
Theresa Dwyer
FENNEMORE CRAIG
3003 N. Central #2600
Phoenix, AZ 85012

Mark Brown
QWEST CORPORATION
3033 N. Third Street, 10th Floor
Phoenix, AZ 85012

Charles W. Steese (012901)
STEESE & ASSOCIATES, P.C.
6400 South Fiddlers Green Circle, Suite 1710
Denver, Colorado 80111

Attorneys for Qwest Corporation

ORIGINAL +13 copies filed this
23rd day of December, 2002:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ

COPY delivered this 23rd day of December:

Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Lyn Farmer, Chief Administrative Law Judge
Jane Rodda, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

Caroline Butler
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

COPY mailed this 23rd day of December, 2002:

Eric S. Heath
SPRINT COMMUNICATIONS CO.
100 Spear Street, Suite 930
San Francisco, CA 94105

Thomas Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, AZ 85004

Joan S. Burke
OSBORN MALEDON, P.A.
2929 N. Central Ave., 21st Floor
PO Box 36379
Phoenix, AZ 85067-6379

Thomas F. Dixon
WORLD COM, INC.
707 N. 17th Street #3900
Denver, CO 80202

Scott S. Wakefield
RUCO
1110 West Washington, Suite 220
Phoenix, AZ 85007

Michael M. Grant
Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Michael Patten
ROSHKA, HEYMAN & DEWULF
400 E. Van Buren, Ste. 900
Phoenix, AZ 85004-3906

Regulatory Affairs
COX COMMUNICATIONS
20402 North 29th Avenue
Phoenix, AZ 85027-3148

Daniel Waggoner
DAVIS, WRIGHT & TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101

Traci Grundon
DAVIS, WRIGHT & TREMAINE
1300 S.W. Fifth Avenue
Portland, OR 97201

Richard S. Wolters
Maria Arias-Chapleau
AT&T Law Department
1875 Lawrence Street, #1575
Denver, CO 80202

Gregory Hoffman
AT&T
795 Folsom Street, Room 2159
San Francisco, CA 94107-1243

David Kaufman
E.SPIRE COMMUNICATIONS, INC.
343 W. Manhattan Street
Santa Fe, NM 87501

Diane Bacon, Legislative Director
COMMUNICATIONS WORKERS OF AMERICA
5818 N. 7th St., Ste. 206
Phoenix, AZ 85014-5811

Philip A. Doherty
545 S. Prospect Street, Ste. 22
Burlington, VT 05401

W. Hagood Bellinger
5312 Trowbridge Drive
Dunwoody, GA 30338

Joyce Hundley
U.S. DEPARTMENT OF JUSTICE
Antitrust Division
1401 H Street N.W. #8000
Washington, DC 20530

Andrew O. Isar
TELECOMMUNICATIONS RESELLERS ASSOC.
4312 92nd Avenue, NW
Gig Harbor, WA 98335

Raymond S. Heyman
ROSHKA, HEYMAN & DEWULF
400 N. Van Buren, Ste. 800
Phoenix, AZ 85004-3906

Thomas L. Mumaw
SNELL & WILMER
One Arizona Center
Phoenix, AZ 85004-0001

Charles Kallenbach
AMERICAN COMMUNICATIONS SVCS, INC.
131 National Business Parkway
Annapolis Junction, MD 20701

Mike Allentoff
GLOBAL CROSSING SERVICES, INC.
1080 Pittsford Victor Road
Pittsford, NY 14534

Andrea Harris, Senior Manager
ALLEGIANCE TELECOM INC OF ARIZONA
2101 Webster, Ste. 1580
Oakland, CA 94612

Gary L. Lane, Esq.
6902 East 1st Street, Suite 201
Scottsdale, AZ 85251

Kevin Chapman
SBC TELECOM, INC.
300 Convent Street, Room 13-Q-40
San Antonio, TX 78205

M. Andrew Andrade
TESS COMMUNICATIONS, INC.
5261 S. Quebec Street, Ste. 150
Greenwood Village, CO 80111

Richard Sampson
Z-TEL COMMUNICATIONS, INC.
601 S. Harbour Island, Ste. 220
Tampa, FL 33602

Megan Doberneck
COVAD COMMUNICATIONS COMPANY
7901 Lowry Boulevard
Denver, CO 80230

Richard P. Kolb
Vice President of Regulatory Affairs
ONE POINT COMMUNICATIONS
Two Conway Park
150 Field Drive, Ste. 300
Lake Forest, IL 60045

Janet Napolitano, Attorney General
OFFICE OF THE ATTORNEY GENERAL
1275 West Washington
Phoenix, AZ 85007

Steven J. Duffy
RIDGE & ISAACSON, P.C.
3101 North Central Ave., Ste. 1090
Phoenix, AZ 85012

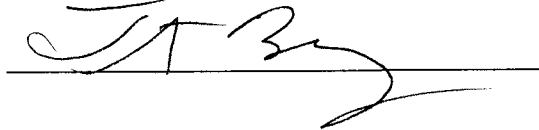
Teresa Tan
WorldCom, Inc.
201 Spear Street, 9th Floor
San Francisco, CA 94105

Karen Clauson
ESCHELON TELECOM
730 Second Avenue South, Ste. 1200
Minneapolis, MN 55402

Curt Huttzell
State Government Affairs
Electric Lightwave, Inc.
4 Triad Center, Suite 200
Salt Lake City, UT 84180

Brian Thomas
Time Warner Telecom, Inc.
223 Taylor Avenue North
Seattle, WA 98109

Harry Pliskin
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230



1372912.1/67817.150